

Vermont Department of Environmental Conservation

Summary of Changes between ICAR Version (2018 06 22; Draft Chapter 22, Stormwater Permitting Rule.pdf) And, Version Filed with Secretary of State (2018 07 06; Draft Chapter 22, Stormwater Permitting Rule Clean for SectState.pdf)

Summary of Revisions to Proposed Rule

Rule Section	Description of Revision
22-105(a)(1)	Corrected cross reference to construction permits
22-109	Corrected cross reference
22-201(55)	Revised definition of “site” to include to include explicit reference to “sidewalks and paths”
22-201(60)	Corrected definition of “stormwater impact fee” to add “mitigate” consistent with H.576/Act 181 of 2018
22-302(b)(3)(A)(i) and (iii)	Revised to also require owner of land on which stormwater system is located to be co-applicant
22-901(a)(1)(D)	Corrected cross reference
22-901(a)(2)(B)	Corrected cross reference to construction permits
22-901(b)(1)(B)	Corrected cross reference
22-901(b)(3)(D)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018
22-901(b)(3)(D)(ii)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018
22-901(c)(4)	Revised to include explicit reference to subsection 22-901 (c)1-3
22-901(d)(1)	Revised to exempt public highway projects from the need to record permits in land records
22-901(e)	Corrected cross reference
22-1002(b)(2)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018
22-1002(b)(5)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018
22-1002(c)(1)(A)	Revised to make consistent with 22-901(b)(2)(B)
22-1002(c)(1)(B)	Revised to make consistent with 22-901(b)(3)(B)
22-1002(c)(1)(D)	Revised to make consistent with 22-901(b)(3)(D)(i)
22-1002(c)(1)(E)	Revised to make consistent with 22-901(b)(3)(D)(ii)
22-1002(c)(1)(F)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018
22-1002(c)(4)(B)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018
22-1003(b)(1)	Corrected cross reference
22-1003(e)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018
22-1101(a)	Corrected cross reference:

Summary of changes between 6/22/2018 and 7/06/2018 versions of the proposed rule

Expanded Descriptions of Proposed Revisions (strikeouts denote deleted text; underlined text denotes additional text)

Rule Section	Description of Revision
22-105(a)(1)	Corrected cross reference to construction permits: (1) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, provided that this exemption shall not apply to construction stormwater permits required under Section 22-107(b)(65) (applicability; permit required) and to discharges from concentrated animal feeding operations requiring permit coverage under this Rule;
22-109	Corrected cross reference: § 22-109. MUNICIPALITIES AND STORMWATER UTILITIES THAT HAVE ASSUMED FULL LEGAL RESPONSIBILITY FOR SPECIFIC IMPERVIOUS SURFACE If a municipality or stormwater utility has assumed full legal responsibility for the discharge of stormwater runoff from an impervious surface and has permit coverage for such impervious surface pursuant to a permit issued under this Rule, the requirements for permit coverage under Sections 22-107(b)(1), (2), (3), and (43) (applicability; permit required; operational permits) shall be satisfied...
22-201(55)	Revised definition of “site” to include explicit reference to “sidewalks and paths”: (55) “Site” means either the drainage area that includes all portions of a project contributing stormwater runoff to one or more discharge points, or the area that includes all portions of disturbed area within a project contributing stormwater runoff to one or more discharge points. The choice of either of these two methods of calculating the site area shall be at the discretion of the designer. In cases where there are multiple discharges to one or more waters, “site” shall mean the total area of the sub-watersheds. For linear projects, including highways, roads, and streets , <u>paths</u> , and <u>sidewalks</u> , the term “site” includes the entire right-of-way within the limits of the proposed work, or all portions of disturbed area within the right-of-way associated with the project. The method of calculating the site area for linear projects shall be at the discretion of the designer. Calculations of site area are subject to the Secretary’s review.
22-201(60)	Corrected definition of “stormwater impact fee” to add “mitigate” consistent with H.576/Act 181 of 2018: (60) “Stormwater impact fee” means the monetary charge assessed to an applicant for the discharge of regulated stormwater runoff in order to <u>mitigate</u> impacts that the discharger is unable to control through on-site treatment or completion of an offset on a site owned or controlled by the applicant.

Summary of changes between 6/22/2018 and 7/06/2018 versions of the proposed rule

22-302(b)(3)(A)(i)	Revised to also require owner of land on which stormwater system is located to be co-applicant: (i) If the applicant does not own the impervious surface, <u>or lands on which the stormwater system used to comply with the requirements of Section 22-901 (operational permits) is located</u> , the owner shall be a co-applicant, and the owner's name, address, and telephone number shall also be included.
22-302(b)(3)(A)(iii)	Revised to also require owner of land on which stormwater system is located to be co-applicant: (iii) If the applicant is a municipality, stormwater utility, or the Vermont Agency of Transportation and does not own the impervious surface, <u>or lands on which the stormwater system used to comply with the requirements of Section 22-901 (operational permits) is located</u> , the owner is not required to be a co-applicant, if the municipality, stormwater utility, or Vermont Agency of Transportation has assumed full legal responsibility for the impervious surface <u>or stormwater system</u> .
22-901(a)(1)(D)	Corrected cross reference: (D) To a discharge of regulated stormwater runoff from impervious surface of three or more acres, which was never previously permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual, requiring permit coverage under Section 22-107(b)(43) (applicability; permit required);
22-901(a)(2)(B)	Corrected cross reference: (B) The project is in compliance with any construction stormwater permit required pursuant to Section 22-107(b)(65) (applicability; permit required).
22-901(b)(1)(B)	Corrected cross reference: (B) Except for impervious surfaces of three or more acres requiring permit coverage under Section 22-107(b)(43) (applicability; permit required), for renewal of an authorization under a general permit or an individual permit, the project, whether previously built or not, shall comply with the terms of the operational stormwater permit issued most recently to the project...
22-901(b)(3)(D)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018: (D) For impervious surfaces of three or more acres that require permit coverage under Section 22-107(b)(4) (applicability; permit required); for the renewal of an authorization under a general permit or an individual permit for impervious surface of less than three acres for which the Secretary has determined additional controls are necessary to implement the TMDL or WQRP for Lake Champlain, <u>Lake Memphremagog</u> , or the stormwater-impaired water; and for regulated stormwater runoff requiring permit coverage pursuant to designation

Summary of changes between 6/22/2018 and 7/06/2018 versions of the proposed rule

	under Section 22-107(c)(1) (applicability; permit required), the project shall:
22-901(b)(3)(D)(ii)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018: (ii) For discharges to Lake Champlain, <u>Lake Memphremagog</u> , or a water that contributes to the impairment of Lake Champlain or <u>Lake Memphremagog</u> , satisfy on-site the redevelopment standard of the Vermont Stormwater Management Manual determined to be technically feasible by an engineering feasibility analysis conducted pursuant to Section 22-1001 (engineering feasibility analysis). For purposes of complying with this subsection, the entire impervious surface of three or more acres shall be treated as though it is being redeveloped.
22-901(c)(4)	Revised to include explicit reference to subsection 22-901 (c)1-3: (4) Notwithstanding the foregoing , requirements of <u>(c)(1)-(3) of this subsection</u> , discharges of regulated stormwater runoff from impervious surface owned or controlled by the Vermont Agency of Transportation and permitted under a general permit, which establishes requirements for implementation of the Lake Champlain TMDL, TMDLs for stormwater-impaired waters, and requirements for existing impervious surface outside of those watersheds, satisfy the requirements of this subsection.
22-901(d)(1)	Revised to exempt public highway projects from the need to record permits in land records: (1) Recording in land records. The permittee shall record in the local land records, within 14 days of issuance of an individual permit or authorization under a general permit, a one-page notice of permit coverage. A one-page notice form may be obtained from the Secretary. A copy of the recording shall be provided to the Secretary within 14 days of the permittee's receipt of a copy of the recording from the local land records. <u>Permits for public linear transportation projects shall be exempt from the requirements of this subsection provided the permit is retained by the permittee in the official project file.</u>
22-901(e)	Corrected cross reference: (e) Presumption applicable to individual permits for discharges of regulated stormwater runoff to waters not principally impaired by stormwater. In any appeal under 10 V.S.A. Chapter 47, an individual permit issued under Sections 22-107(b)(1),(2), or (3) (applicability; permit required; operational permits) shall have a rebuttable
22-1002(b)(2)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018: (2) If paying fees to satisfy the requirements of Section 22-901(b)(2) (operational permitting standards; impaired, no TMDL), the Secretary must determine that sufficient offset charge capacity has been created in the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain <u>or Lake Memphremagog</u> in which the project is

Summary of changes between 6/22/2018 and 7/06/2018 versions of the proposed rule

	located to ensure the discharge will not increase the pollutant load in the receiving water for the pollutant of concern...
22-1002(b)(5)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018: (5) Fees shall be deposited in the Stormwater Fund, established under 10 V.S.A. § 1264b, and into the account for the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain <u>or Lake Memphremagog</u> in which the project is located.
22-1002(c)(1)(A)	Revised to make consistent with 22-901(b)(2)(B): (A) Projects subject to Sections 22-901(b)(2)(B) (impaired, no TMDL; redevelopment, renewal, three-acre, residually designated) or 22-901(b)(3)(D) (impaired, with TMDL; three-acre previously permitted, certain renewals, residually designated) that comply with the <u>water quality treatment or channel protection applicable standards of the Vermont Stormwater Management Manual</u> on more than <u>875%</u> of a site for one or more of the treatment criteria shall be eligible to receive funds for the portions of the site exceeding the 75% target that are in compliance with the applicable standards, and projects subject to Section 22-901(b)(3)(E) (impaired, with TMDL; three-acre not previously permitted) that fully comply with the redevelopment standard shall be eligible to receive funds for the portions of the site exceeding the redevelopment standard;
22-1002(c)(1)(B)	Revised to make consistent with 22-901(b)(3)(B): (B) Projects subject to Section 22-901(b)(3)(B) (impaired, with TMDL; redevelopment) that exceed <u>the requirements of the redevelopment standard of the Vermont Stormwater Management Manual such that more than 60% of the site is in compliance with the water quality treatment standard of the Vermont Stormwater Management Manual</u> applicable standards shall be eligible to receive funds for the portions of the site exceeding the standards that are in compliance with the water quality treatment and channel protection standards of the Vermont Stormwater Management Manual, when such treatment is not already being provided through implementation of the redevelopment standard of the Vermont Stormwater Management Manual;
22-1002(c)(1)(D)	Revised to make consistent with 22-901(b)(3)(D)(i): (D) Projects subject to Section 22-901(b)(3)(D)(i) (<u>stormwater-impaired, with TMDL; three-acre previously permitted, certain renewals, residually designated</u>) that comply with the channel protection standard of the Vermont Stormwater Management Manual on more than <u>85 %</u> of a site shall be eligible to receive funds for the portions of the site exceeding <u>75%</u> that are in compliance with the channel protection standard;
22-1002(c)((1)(E)	Revised to make consistent with 22-901(b)(3)(D)(ii) (E) Projects subject to Section 22-901(b)(3)(D)(ii) (<u>impaired, Champlain and Memphremagog, with TMDL; three-acre previously permitted, certain renewals, residually designated</u>) that exceed the requirements of the redevelopment standard such that more than 60% of the site is in

Summary of changes between 6/22/2018 and 7/06/2018 versions of the proposed rule

	<u>compliance with the water quality treatment standard of the Vermont Stormwater Management Manual shall be eligible to receive funds for the portions of the site exceeding the redevelopment standard;</u>
22-1002(c)(1)(F)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018
22-1002(c)(4)(B)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018: (B) Funds may only be awarded to a project eligible for receipt of stormwater impact fees from the Stormwater Fund account for the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain <u>or Lake Memphremagog</u> in which the project is located.
22-1003(b)(1)	Corrected cross reference: (b) The following types of projects may be completed as offsets: (1) For a project subject to Sections 22-901(b)(2)(B) (impaired, no TMDL; redevelopment, renewal, three-acre, residually designated) or 22-901(b)(3)(D) (impaired, with TMDL; three-acre previously permitted, certain renewals, residually designated), the part of the project, which exceeds 75% of the site, that complies with the applicable standards, and projects subject to Section 22-901(b)(3)(D E) (impaired, with TMDL; three-acre not previously permitted) that exceed the redevelopment standard based on the area of impervious surface for which water quality volume treatment is provided but where treatment is not required under the redevelopment standard;
22-1003(e)	Added reference to Lake Memphremagog consistent with H. 576/Act 181 of 2018: (e) If completing an offset to comply with Section 22-901(b)(2) (operational permitting standards; impaired, no TMDL), the applicant shall provide modeling, acceptable to the Secretary, demonstrating the reduction in pollutant load that the offset will generate. If the applicant must complete an offset under Section 22-901(b)(2) (operational permitting standards; impaired, no TMDL) because sufficient offset charge capacity has not previously been created in the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain <u>or Lake Memphremagog</u> in which the project is located, the applicant's modeling must demonstrate that the offset will generate sufficient offset charge capacity to ensure the discharge will not increase the pollutant load in the receiving water for the pollutant of concern.
22-1101(a)	Corrected cross reference: (a) Applicability. This Subchapter applies to municipalities' discharges of regulated stormwater runoff from municipal roads requiring permit coverage under Section 22-107(b)(5 4) (applicability; permit required). In addition to the generally applicable provisions of this Rule, permits issued pursuant to Section 22-107(b)(5 4) (applicability; permit required) shall comply with the requirements of this section.